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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,)

9 Plaintiff,)

10 vs.)

11 KEVIN M. ELLISON,)

12 Defendants)

CR-12-072-LRS

United States' Response to
Defendant's Motion to
Suppress

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15 Plaintiff, United States of America, by and through Michael C. Ormsby,
16 United States Attorney for the Eastern District of Washington, and Aine Ahmed,
17 Assistant United States Attorney for the Eastern District of Washington,
18 respectfully submits the following response to the Defendant's motion for
19 suppression.

20 BACKGROUND FACTS:

21 On June 14, 2012, at approximately 5:30 a.m., a fire was discovered at Big
22 Trout Lodge Apartment complex, building #11, unit #256, located at 22809 E.
23 Country Vista, Liberty Lake, Washington. The Big Trout Lodge Apartment
24 complex is a commercial rental property, which is engaged in interstate commerce.
25 According to the assistant manager, Scarlet Stalter, there are approximately 297
26 apartments in the complex and there are approximately 23 apartments in Building
27 #11. Scarlet Stalter said that the Spokane Shock Football Team leased apartment
28 #256 on or about March 1, 2012, and that the apartment was occupied by Kevin

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1 ELLISON, a member of the Spokane Shock Football Team. Ms. Stalter also said
2 the apartments are managed by Riverstone Residential Group a nationwide
3 property management company.

4 On June 14, 2012, Spokane Valley Deputy Fire Marshal (DFM) Clifton
5 Mehaffey became aware that a commercial fire had occurred at the Big Trout
6 Lodge Apartment complex, in apartment #256. DFM Mehaffey was informed that
7 the tenant of the apartment, Kevin ELLISON, escaped the fire through the
8 apartment window and was subsequently transported and treated at Deaconess
9 Hospital. According to medical records, the Defendant ELLISON arrived at the
10 hospital at 06:41 in the morning. The medical records indicate that the Defendant
11 was given a Hydrocodone pill at 6:53 a.m. and then another Hydrocodone pill at
12 7:23 a.m.

13 According to DFM Mehaffey's report, he arrived at Deaconess Hospital at
14 approximately 7:45 a.m. *See Attachment A* (Report of DFM Mehaffey). As
15 Mehaffey approached ELLISON, he asked him whether the Defendant's name was
16 Kevin ELLISON, and ELLISON responded that it was. Mehaffey identified
17 himself as a fire marshal, and Mehaffey was wearing a sidearm, badge, handcuffs
18 which were clearly visible, and his law enforcement credentials around his neck.
19 Mehaffey asked the Defendant whether he was okay, and the Defendant stated that
20 he was feeling pretty good although he had inhaled some smoke. Mehaffey sat
21 down in a chair next to the bed, and asked the Defendant what had happened. The
22 Defendant stated he had been smoking a cigar, and that he placed the cigar against
23 the blanket with his hand, and lit the bed on fire. Mehaffey then asked the
24 Defendant whether he had been asleep when this happened, and the Defendant
25 replied that he had not, and that "God told me to do it." The Defendant went on to
26 say that he had heard his roommate banging on his door, and that he informed his
27 roommate that everything was going to be okay and that God would make sure
28 that nobody got hurt. The Defendant stated that he would take responsibility for

1 his actions, and acknowledged that he had committed a crime. Mehaffey informed
2 the Defendant he was going to be charged with a crime, and the Defendant stated,
3 “yeah..I know.”

4 At that point, the General Manager of the Spokane Shock football team,
5 Ryan Rigmaiden, entered the room. Mehaffey briefly spoke with Rigmaiden, and
6 then stepped out of the room to telephone ATF Special Agent Lance Hart. Hart
7 informed Mehaffey that he was on the way to the hospital, and requested that
8 Mehaffey *Mirandize* the Defendant before he arrived. Mehaffey then went to his
9 vehicle to retrieve a “rights warning” card, and upon his return to the Defendant’s
10 hospital room, read the Defendant his *Miranda* warnings, and had the Defendant
11 sign the card, acknowledging that his rights had been read to him. *Attachment B.*
12 After waiving his rights, the Defendant spoke about his prior drug use, specifically
13 involving Vicodin pills, and his previous arrest and release from the San Diego
14 Chargers. He again talked about the fire, acknowledging that he watched the fire
15 burn before escaping out of a window, and reiterated that God had told him to do
16 it. The Defendant was asked if he was on any drugs, and stated that he was not.

17 The Defendant then received a telephone call from a family member, and
18 Mehaffey left the room so the Defendant could have his conversation in private.
19 Mehaffey returned to the room as the Defendant was on the phone. The Defendant
20 turned to Mehaffey while he was still on the phone, and asked Mehaffey whether
21 he could get an attorney, and Mehaffey said he could. Mehaffey asked if he
22 wanted to answer any questions, and the Defendant stated that he did not. When
23 Agent Hart arrived at the Defendant’s hospital room at approximately 8:30 a.m,
24 the Defendant informed Hart that he had invoked his rights. Agent Hart informed
25 the Defendant that was fine. The Defendant and Agent Hart then engaged in small
26 talk concerning their respective religious faiths and about family members.

27 On June 14, 2012, SA Hart contacted Ryan Rigmaiden, the General
28 Manager of the Spokane Shock Football Team at Deaconess Hospital. Rigmaiden

1 said that while he was in the hospital with the Defendant, the Defendant had told
2 him that he had set his bed on fire using a "blunt" because "GOD" had told him to
3 do it.

4 On June 14, 2012, DFM Mehaffey interviewed David Tucker, a member of
5 the Spokane Shock Football Team. Tucker is a roommate of ELLISON and that
6 they both resided in unit #256 at Big Trout Lodge Apartments. According to
7 Mehaffey, Tucker stated that he awoke to the sound of his smoke alarm and he
8 attempted to contact ELLISON by knocking on his bedroom door. Tucker
9 reported that ELLISON stated, "I'm good", but did not open the door. Tucker left
10 the apartment and notified the other tenants of the fire.

11 ARGUMENT:

12 The Defendant was coherent during the entire interview. The two
13 Hydrocodone pills that he took that morning, one of which was administered just
14 minutes before he was interviewed, did not diminish the Defendant's ability to
15 understand why a law enforcement officer was in his hospital room to speak with
16 him. The Defendant was responsive to questioning and was very specific about
17 his past, including providing details about a past arrest, down to the number of
18 Vicodin pills he purchased from a drug dealer prior to his arrest in San Diego.
19 The Defendant also provided details about the fire, and included the fact that his
20 roommate was banging on his door during the fire. The Defendant was also
21 coherent enough to speak with coaches and the General Manager, and family
22 members. He was also cognitively alert and able enough to invoke his rights after
23 consulting with family members. Mehaffey stepped out of the room while the
24 Defendant engaged in these conversations, which supports the fact that the
25 Defendant was not in custody at this time. Moreover, Mehaffey went to his
26 vehicle to retrieve the rights warning card while the Defendant remained in the
27 hospital room, further indicating that the Defendant was not in custody at that
28 point. *See United States v. Martin*, 781 F.2d 671 (9th Cir. 1985)(questioning a

1 suspect in the hospital did not rise to custody status because enforcement did not
2 coordinate the Defendant's arrest with the extent of his hospitalization in order to
3 avoid reading him Miranda warnings). *Id.* at 673. The *Martin* court found that
4 following:

5 Fact that hospitalized defendant may have been in pain and was under
6 influence of Demerol during questioning by police at hospital did not render
7 his statements to police involuntary; defendant was awake and relatively
8 coherent during questioning, had not received excessive quantities or
9 unusual combinations of drugs, and had shown willingness to speak to
10 police.

11 *Id.* at 671.

12 The district court properly concluded that although the defendant was
13 injured and under medical care at the time the statements were made, the
14 type, dosage, and schedule of painkilling narcotic administered to [Martin]
15 was not sufficient to overbear his will to resist the questioning or impair his
16 rational faculties.

17 *Id.* at 673.

18 Voluntariness must be established by a preponderance of the evidence.
19 *United States v. Kelly*, 953 F.2d 562, 564 (9th Cir. 1992). The test for determining
20 whether a confession is voluntary is "whether, considering the totality of the
21 circumstances, the government obtained the statement by physical or
22 psychological coercion or by improper inducement so that the suspect's will was
23 overborne." *Derrick v. Peterson*, 924 F.2d 813, 817 (9th Cir. 1990). "Whether
24 there has been a valid waiver depends on the totality of the circumstances,
25 including the background, experience, and conduct of defendant." *United States v.*
26 *Bernard S.*, 795 F.2d 749, 751 (9th Cir. 1986). Here the Defendant initially gave
27 a voluntary non-custodial statement. After he was *Mirandized*, he again gave the
28 same statement. He also gave the same statement to the General Manager, Ryan
Rigmaiden, who was never asked by any law enforcement officer to speak with the
Defendant. There is no indication that the Defendant's rational faculties were
impaired, or that the narcotics administered to him overbore his will to resist the
questioning. *See United States v. Heller*, 551 F.3d 1108, 1113 (9th Cir.

1 2009)(ingestion of Tylenol III with codeine the morning of the interview did not
2 make the Defendant's statement involuntary).

3 CONCLUSION:

4 For the aforementioned reasons, the Defendant's motion should be denied.

5 DATED August 3, 2012.

6 Michael C. Ormsby
7 United States Attorney

8 *s/Aine Ahmed*

9 Aine Ahmed
10 Assistant United States Attorney

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12 I hereby certify that on August 3, 2012, I electronically filed the foregoing
13 with the Clerk of the Court using the CM/ECF System which will send
14 notification of such filing to the following, and/or I hereby certify that I have
15 mailed by United States Postal Service the document to the following non-
16 CM/ECF participant(s):

17
18 Ms. Kimberly Deater
19 Attorney at Law
20 10 North Post Street, Suite 700
21 Spokane, WA 99201

22 *s/Aine Ahmed*

23 Aine Ahmed
24 Assistant United States Attorney
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